IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

SA.No. 773 of 1994()

AS.19/1989 of DISTRICT COURT, KOTTAYAM
OS.327/1986 of MUNSIFF COURT, PALA

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APPELLANT/APPELLANT/DEFENDANT:

GEORGE THOMAS, S/O.THOMMAN, PEEDIKAKAVALAYIL,
KADANADUKARA, DO VILLAGE, MEENACHIL TALUK

BY ADV. SRI.V.R.K.KAIMAL & C.USHA KAIMAL

RESPONDENT/RESPONDENT/PLAINTIFF:

JOSEPH, S/O.JOSEPH, VADAKEKUNNAMCHIRAYIL VEEDU, KANNOLIL,
KADANADUKARA, DO VILLAGE, MEENACHIL TALUK

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A .NO.773 OF 1994

Dated 14th August 2007

J U D G M E N T

Defendant in O.S.327 of 1986 on the file of Munsiff court, Pala is the appellant. Plaintiff is the respondent. Respondents instituted the suit seeking a decree for permanent prohibitory injunction. Plaint schedule property is 2 acres and 23 cents in survey No.1844/6 of Kadanadu village. Case of respondent was that plaint schedule property belongs to him and he is in absolute possession and appellant has no manner of right or possession of the same and plaint schedule property is separated from other properties by a line (Edavazhy) on south and north, kayyalas on the east and west and property which lies to the west belongs to appellant and appellant attempted to trespass into the property and he has no right to do so and therefore appellant is to be restrained by a decree for perpetual injunction. Appellant resisted the suit contending that plaint schedule property originally belonged to the grand father of respondent who died

intestate in 1978 and on his death plaint schedule property devolved on the father, brothers and sisters of respondent and Ext.A1 is illegal and respondent did not derive any right thereunder and property of appellant is lying 6 feet in higher level than other property and there is no thotty on the northern side of plaint schedule property and a road has been constructed on the basis of an agreement entered into by land owners through which road passes and also constructed approach road and appellant has also constructed a road and agreement was entered into on bond paper and at that time father of respondent purchased mango tree from the appellant and respondent is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of Pws.1 to 4, Dws.1 to 7, Exts.A1 and A2, B1 to B4 and C1 to C3 granted a decree for injunction restraining appellant from demolishing the oruva kayyala on western side of plaint schedule property which separates the remaining property from his property. Appellant challenged the decree and judgment before District court, Kottayam in A.S.19 of 1989. Before first appeal was disposed, appellant filed O.S.174 of 1988 before Munsiff court,

Pala seeking a decree for declaration of title and possession over the property covered under Exts.B2 and B3. In that suit appellant filed I.A.727 of 1988, an application under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction, restraining respondent herein from trespassing into his property. Order of temporary injunction was granted by the Munsiff. Respondent along with his brother challenged that order before District court, Kottayam in C.M.A.65 of 1988. Learned District Judge heard first appeal and C.M.A together. As per common judgment on re-appreciation of evidence, learned District Judge confirmed the decree granted by trial court and set aside the order of injunction granted in I.A.727 of 1988 and remanded the petition to the trial court for fresh disposal. Learned counsel appearing for appellant submitted that later on, that suit was withdrawn.

3. Second appeal was filed challenging the concurrent decree for permanent prohibitory injunction granted against defendant. Appeal was admitted formulating substantial questions of law.

4. Learned counsel appearing for appellant and respondent were heard. Though learned counsel appearing

for appellant argued that finding on the question of title by courts below is unsustainable, on hearing the counsel and going through the records, it is seen that no court fee was paid under Section 25(a) of Kerala Court Fees and Suit Valuation Act. Instead court fee was paid only under Section 25(c). No issue on title was also framed. Being a suit for injunction the only question relevant for decree was possession. Though there is a reference about title in the judgment of the trial court, as question of title is not to be decided in the suit, I do not find it necessary to go into that question canvassed by learned counsel appearing for appellant.

5. On appreciating the evidence trial court and first appellante court accepted the case of respondent that respondent is in possession of the plaint schedule property. That factual finding cannot be interfered by re-appreciating the evidence and substituting the findings of fact entered into by the courts below, to the findings of this court on such re-appreciation. Therefore though substantial questions of law are formulated, on the facts and circumstances of the case, those questions are not actually involved in the appeal.

On the facts, I do not find any reason to interfere with the decree granted by the courts below. It is made clear that findings on the question of title will not prevent the parties from setting up their title in a proper suit or any other proceeding including proceeding under the Kerala Survey and Boundaries Act.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.773 OF 1994

14th AUGUST 2007

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